IIG Wireless, Inc. f/k/a Unlimited PCS, Inc.; and UPCS CA Resources, Inc. *and* Joanna Rosales. Case 21–CA–152170

April 30, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On April 14, 2016, Administrative Law Judge Jeffrey D. Wedekind issued the attached decision. The Respondents filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondents filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] only to the extent consistent with this Decision and Order.

Background

Since at least August 2012, Respondent IIG has maintained a Mutual Arbitration Agreement (the Agreement), which employees are required to sign as a condition of employment. The relevant portion of the Agreement reads as follows:

> ([T]he "Company") and I mutually agree that any dispute or controversy between us arising from or in any way related to my employment with the Company, shall be submitted to and determined by binding arbitration under the California Arbitration Act (Cal. Code Civ. Proc. § 1280 *et seq.*) . . . . This agreement governs all disputes between the Company and me, including without limitation disputes related to my seeking employment with the Company, the terms or conditions of my employment, the termination of my employment, and breaches of any duty owed by me to the Company. This agreement governs all disputes whether based on tort, contract, statute, common law or otherwise, including but not limited to claims for misappropriation of trade secrets, breach of any duty of loyalty, contractual obligation or fiduciary duty, harassment and discrimination. This agreement, however, does not govern disputes regarding entitlement to Worker's Compensation or Unemployment Insurance benefits . . . . I understand that by agreeing to this binding arbitration provision, both I and the Company give up our rights to trial by jury.

Relying on *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. den. in relevant part 808 F.3d 1013 (5th Cir. 2015), the judge found that the Respondents violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing the Agreement because it required employees to waive their right to pursue class or collective actions in all forums. Applying the Board's decision in *U-Haul Co. of California,* 347 NLRB 375, 377–378 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007), which relied on the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the judge also found that the maintenance of the Agreement violated the Act because employees would reasonably read the Agreement to prohibit or restrict the filing of unfair labor practice charges with the Board.

On October 24, 2018, the Board issued a Decision, Order, and Notice to Show Cause in this case. The Board dismissed the allegation that the maintenance and enforcement of the Agreement unlawfully restricted employees' rights to pursue class or collective actions in light of the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612, 1632 (2018), in which the Court held that employer-employee agreements that contain class- and collective-action waivers and require individualized arbitration do not violate Section 8(a)(1) of the Act and should be enforced as written pursuant to the Federal Arbitration Act (FAA). The Board also gave notice to the parties to show cause why the remaining issue in the case—concerning the Respondents' alleged restriction on employee access to the Board—should not be remanded to the judge for further proceedings in light of the Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017).[2] The Respondents and the General Counsel each filed a response to the Notice to Show Cause. Both parties opposed remanding this case to the judge. In view of the parties' responses, and since the remaining allegations may be decided based on the existing record, we find that a remand is unnecessary.

[1] We have amended the judge's conclusions of law consistent with our findings herein.

[2] In *Boeing*, the Board overruled the "reasonably construe" prong of *Lutheran Heritage* and announced a new standard, which applies retroactively, for evaluating the lawfulness of a facially neutral policy. 365 NLRB No. 154, slip op. at 2–3, 17. Under *Boeing*, the Board first determines whether a challenged rule or policy, when reasonably interpreted, would potentially interfere with the exercise of rights under Sec. 7 of the Act. If not, the rule or policy is lawful. If so, the Board evaluates two things: "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." Id., slip op. at 3. The *Boeing* standard replaced the "reasonably construe" prong of *Lutheran Heritage*. Other aspects of *Lutheran Heritage* remain intact, including whether a challenged rule or policy explicitly restricts activities protected by Sec. 7. 343 NLRB at 646.

For the reasons explained below, we adopt the judge's finding that the Respondents' maintenance of the Agreement violated Section 8(a)(1) of the Act.

Discussion

In *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10 (2019), the Board held that, notwithstanding the Supreme Court's decision in *Epic Systems*, above, the FAA "does not authorize the maintenance or enforcement of agreements that interfere with an employee's right to file charges with the Board." Id., slip op. at 5. This is so because the FAA's requirement that arbitration agreements be enforced as written "may be 'overridden by a contrary congressional command,'" which the Board found to be established in Section 10 of the Act. Id. (quoting *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987)).

Accordingly, the Board held that an arbitration agreement that "explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found unlawful." Id. The Board further held that where an arbitration agreement does not contain such an express prohibition—i.e., where the arbitration agreement in question is facially neutral—the Board must apply the standard set forth in *Boeing* and initially "determine whether that agreement, 'when reasonably interpreted, would potentially interfere with the exercise of NLRA rights.'" Id. (quoting *Boeing*, 365 NLRB No. 154, slip op. at 3). The Board found that, under *Boeing*, arbitration agreements violate the Act when, "taken as a whole, [they] make arbitration the *exclusive* forum for the resolution of all claims, including federal statutory claims under the National Labor Relations Act." Id., slip op. at 6. Further, the Board found that, "as a matter of law, there is not and cannot be any legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employees' access to the Board or its processes." Id.

The Agreement here requires that "any dispute or controversy . . . arising from or in any way related to my employment with the Company, shall be submitted to and determined by binding arbitration." As in *Prime Healthcare*, we find that such language makes arbitration the *exclusive* forum for resolving all disputes, including those brought under the Act, and is therefore unlawful. See also *Beena Beauty Holding, Inc. d/b/a Planet Beauty*, 368 NLRB No. 91, slip op. at 2–3 (2019) (finding that arbitration agreement requiring employer and employees "to submit any claims that either has against the other to final and binding arbitration" made arbitration the exclusive forum for resolving all disputes and was unlawful under *Prime Healthcare*). Accordingly, we find that the Agreement is unlawful under Category 3 of *Boeing*. Id., slip op. at 6–7.[3]

Amended Conclusion of Law

We find that the Respondents, as joint employers, have violated Section 8(a)(1) of the Act by maintaining a Mutual Arbitration Agreement that employees would reasonably believe bars or restricts them from filing unfair labor practice charges with the National Labor Relations Board.

ORDER

The Respondents, IIG Wireless, Inc, f/k/a Unlimited PCS, Inc., Garden Grove, California, and UPCS CA Resources, Inc., Irvine, California, joint employers, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a Mutual Arbitration Agreement that employees would reasonably believe bars or restricts their right to file charges with the National Labor Relations Board.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Mutual Arbitration Agreement in all its forms or revise it in all its forms to make clear to employees that the Mutual Arbitration Agreement does not bar or restrict employees' right to file charges with the National Labor Relations Board.

(b) Notify all current and former employees who were required to sign or otherwise became bound to the Mutual Arbitration Agreement in any form that the Mutual Arbitration Agreement has been rescinded or revised, and if revised, provide them a copy of the revised agreement.

(c) Within 14 days after service by the Region, post at its facilities in Garden Grove and Irvine, California, and at all other facilities where the unlawful arbitration agreement is or has been in effect, copies of the attached notice marked "Appendix" in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an

[3] *Prime Healthcare* also considered and rejected the contention that an arbitration agreement is rendered lawful by language that limits its scope to claims for which a court would be authorized to grant relief. Id., slip op. at 6 & fn. 12. Accordingly, we reject the Respondents' argument on exception that its Agreement is lawful because it is "directed at civil litigation, not administrative charges."

internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 14, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 30, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a Mutual Arbitration Agreement that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights listed above.

WE WILL rescind the Mutual Arbitration Agreement in all its forms or revise it in all its forms to make clear that the Mutual Arbitration Agreement does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who were required to sign or otherwise became bound to the Mutual Arbitration Agreement in any form that the Mutual Arbitration Agreement has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised agreement.

IIG WIRELESS, INC. AND UPCS CA RESOURCES, INC.

The Board's decision can be found at www.nlrb.gov/case/21-CA-152170 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Thomas Rimbach, Esq. and *Lindsay R. Parker, Esq.,* for the General Counsel.

Christine D. Baran, Esq. and *John A. Mavros, Esq. (Fisher & Phillips, LLP),* for the Respondent.

Matthew Righetti, Esq. (Righetti Glugoski, P.C.) for the Charging Party.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. This is another case involving an alleged unlawful mandatory arbitration provision. The General Counsel alleges that, as in *D. R. Horton*, 357 NLRB 2277 (2012), and *Murphy Oil USA, Inc*., 361 NLRB 774 (2014), the subject provision here violates the National Labor Relations Act both because it would reasonably be construed to prohibit employees from filing unfair labor practice charges with the Board and because it has been applied to preclude employees from pursuing other employment-related claims on a class or representative basis either in arbitration or in court.

On January 26, 2016, the General Counsel, the Charging Party (Joanna Rosales), and the Respondents (IIG Wireless, Inc. and UPCS CA Resources, Inc.) jointly filed a motion and stipulation of facts requesting that the allegations be resolved without a hearing based on the stipulated record. The motion was granted the same day, and the General Counsel and the Respondent Companies thereafter filed briefs on March 10 and 11, respectively.[1] Based on those briefs and the entire stipulated record, for the reasons set forth below I find that the Respondents unlawfully maintained and enforced the mandatory arbitration provision as alleged.[2]

I. THE FACTS

Respondent IIG is engaged in the retail sale of wireless and telecommunications products and maintains its principal offices and a facility in Garden Grove, California. Respondent UPCS provides staffing for wireless-communications retail facilities and maintains its principle offices and a facility in Irvine, California.

Since about April 2013, Respondents have been joint employers of the employees of IIG, including Rosales. UPCS provided staffing for the California retail facilities operated by IIG, administered a common labor relations policy with IIG for its employees, and exercised control over that policy.

Rosales was hired by IIG in August 2012. Pursuant thereto, on August 8, 2012, she signed and agreed to be bound by a Mutual Arbitration Agreement that IIG maintains and presents to its employees for execution as part of the application process. In relevant part, the Agreement states that "binding arbitration of disputes, rather than litigation in courts," is a "generally faster, cheaper and less formal" means for resolving employment disputes, and that the Company is committed to using it to resolve "all legal disputes" as an "alternative to the court system." Accordingly, it provides that, "as a condition of employment," employees must agree to binding arbitration of "any dispute or controversy between [the Company and the employee] arising from or in any way related to . . . employment with the Company," except for disputes regarding worker's compensation or unemployment insurance benefits. The Agreement does not specifically state, however, whether disputes must be arbitrated individually or may be arbitrated on a class or collective basis.

Rosales worked for IIG through January 2014, when she was terminated from her employment by IIG and UPCS. About 9 months later, in October 2014, she filed a demand for arbitration before the JAMS arbitration service, on behalf of herself and an alleged class of "similarly situated and aggrieved employees," regarding Respondents' alleged wage and hour and other violations under the California Labor Code.

On November 4, 2014, Respondents sent letters to both JAMS and Rosales's attorney formally objecting to the demand for class arbitration. Respondents asserted that Rosales's demand "seeks a collective arbitration where none is authorized by the underlying arbitration agreement." IIG also specifically asserted that, because the Agreement is "silent" as to class or collective arbitration, "it is resigned to individual arbitration."

A few weeks later, on November 17, 2014, Rosales filed a class or representative-action complaint against Respondents in the Superior Court of California, County of Orange, asserting wage and hour and other claims under the California Labor Code (*Rosales v. UPCS CA Resources, Inc. et al*., Case No. 30-2014-00756943-CU-OE-CXC). On November 19, she amended the complaint to reflect a representative action under the California Labor Code's Private Attorneys General Act (PAGA).

On January 14, 2015, Respondents filed a cross-complaint for declaratory and injunctive relief in the state court action seeking: (1) a declaration that the Agreement prohibits class or representative arbitration of disputes subject to the Agreement; (2) an order enjoining Rosales from proceeding with collective arbitration against Respondents; (3) a declaration that the Agreement reserves for the Superior Court jurisdiction over all questions concerning whether the Agreement prevents class arbitration of disputes subject thereto; and (4) an order enjoining Rosales from seeking any determination or seeking to enforce any determination from the arbitrator that the Agreement provides the opportunity for collective resolution of any dispute subject thereto.

About 6 months later, on June 8, Respondents also filed a motion for stay of the action and all discovery in the state court case.

Thereafter, on June 16, Rosales filed a petition to compel arbitration of the Respondents' cross-complaint. The petition sought: (1) an order referring the question of arbitrability of class claims to the arbitrator for decision; (2) in the event the Superior Court decided to make a determination whether class arbitration is permissible under the terms of the Agreement, an order compelling arbitration of the class claims challenged in the cross-complaint; and (3) an order staying the cross-complaint pending arbitration.

On June 23, Respondents filed a motion for judgment on the pleadings in the state court action. A week later, on July 1, they also filed an opposition to Rosales's petition to compel arbitration of their cross-complaint.

On July 7, Rosales filed a reply in support of her petition to compel arbitration of the cross-complaint. She also filed an opposition to the Respondents' motion for stay on July 10, and an opposition to their motion for judgment on the pleadings on July 13.

On July 14, the Superior Court issued a minute order denying Rosales's petition to compel arbitration of the Respondents' cross-complaint. In its order, the court held, among other things, that the "subject arbitration agreement is silent on the availability of class/representative arbitration—thus requiring [Rosales] to arbitrate her individual claims, only, pursuant to [*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp*., 559 U.S. 662, 684–685 (2010)]."

Thereafter, in late July, the Superior Court granted Respondents' motion for a stay of the PAGA action and formal discovery. However, it stayed Respondents' motion for judgment on the pleadings pending the outcome of the appeal process.

[1] See Sec. 102.35(a)(9) of the Board's Rules.

[2] The initial charge was filed and served on May 13 and 14, 2015, respectively, and the complaint issued a few months later on July 29. The Board's commerce jurisdiction is undisputed and well established by the admitted allegations and/or stipulated facts.

In the meantime, on July 16, Rosales filed a notice of appeal of the court's order denying her petition to compel arbitration of the cross-complaint. Approximately 3 months later, on October 31, she filed her opening brief in support of the appeal with the California Court of Appeal, Fourth Appellate District, Division 3 (Case G052269). On December 17, Respondents filed a brief in response.

II. ANALYSIS

As indicated above, the General Counsel alleges that the subject arbitration provision is clearly unlawful under *D. R. Horton* and *Murphy Oil* for two reasons: first, because employees would reasonably construe it to require arbitration of unfair labor practice allegations, thereby preventing them from filing such charges before the Board; and, second, because Respondents applied the provision to prevent Rosales from pursuing her wage and hour and other state law claims against them on a class or representative basis either in arbitration or in court.

In response to the first, Respondents argue that employees would not reasonably construe the provision in such a manner as "the overall context of Agreement is directed at civil litigation, not administrative charges." However, the language of the provision is not significantly or substantially different from provisions found unlawful in other *D. R. Horton/Murphy Oil* cases. See, e.g., *ISS Facility Services, Inc*., 363 NLRB No. 160 (2016) (provision stated that all disputes between the employer and the employee would be decided in arbitration "and not by way of court or jury trial"); and *Cowabunga, Inc*., 363 NLRB No. 133 (2016) (provision stated that all claims between the employer and the employee would be resolved through binding arbitration "rather than through court litigation").[3] See also *U-Haul Company of California*, 347 NLRB 375, 377–378 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007) (finding employer's policy requiring arbitration of all disputes unlawful notwithstanding that the memo announcing the policy stated that the arbitration process was limited to disputes "that a court of law would be authorized to entertain or would have jurisdiction over to grant relief").

With respect to the second, Respondents argue that *D. R. Horton* and *Murphy Oil* were wrongly decided and have been rejected in relevant part, not only by the Fifth Circuit on appeal in those cases,[4] but by every other federal district and appellate court that has considered them in determining whether to enforce such mandatory individual arbitration provisions. However, Respondents apparently missed *Totten v. Kellogg Brown & Root, LLC* et al., — F.Supp.3d — 2016 WL 316019, 2016 U.S. Dist. LEXIS 10424 (C.D. Cal. Jan. 22, 2016) (Dolly M. Gee, J.), likewise a California wage and hour case, where, following an exhaustive analysis, the district court expressly endorsed the Board's reasoning in declining to enforce the employer's mandatory individual arbitration agreement in that case.[5]

In any event, administrative law judges must follow Board precedent unless and until it is overruled by the Supreme Court. *Pathmark Stores, Inc*., 342 NLRB 378 fn. 1 (2004). Under that precedent, it is unlawful for an employer to maintain and/or enforce a mandatory arbitration provision that, either on its face or as applied, precludes employees from pursuing employment related claims on a class or collective basis in any forum. See, e.g., *Haynes Bldg. Services, LLC*, 363 NLRB No. 125 (2016); *Fuji Food Products*, 363 NLRB No. 118 (2016); and *Employer's Resource,* 363 NLRB No. 59 (2015) (finding such violations under the reasoning of *D. R. Horton* and *Murphy Oil* where, like here, the arbitration agreement was silent regarding class or collective claims but was applied by the employer to bar them in any forum).

Respondents also make various other arguments why no violations should be found in this case. All of the arguments are contrary to Board precedent as well.

(1) *Timeliness of the underlying charges*. Respondents argue that the complaint allegations must be dismissed because Rosales's May 13, 2015 charge was filed and served more than 6 months after she was given clear and unequivocal notice of both the maintenance and the enforcement of the arbitration provision. However, the Board has repeatedly rejected this argument in previous *D. R. Horton/Murphy Oil* cases, holding that a violation may be found where, as here, an unlawful provision has been maintained and/or enforced within 6 months of the charge, regardless of when the provision became effective or was first acknowledged by or enforced against the employee. See, e.g., *Cowabunga, Inc*., slip op. at 2; *Fuji Food Products,* slip op. at 1 fn. 1, 7; and *CPS Security (USA), Inc.*, 363 NLRB No. 86, slip op. at 1 fn. 2 (2015). Here, there is no dispute that Respondents continued to maintain the subject arbitration provision within 6 months of Rosales's initial unfair labor practice charge. Nor is there any dispute that Respondents continued to seek enforcement of the provision against Rosales within 6 months of the charge; specifically, through their January 14, 2015 cross-complaint and various subsequent motions and pleadings in Rosales's state court action.

(2) *Rosales's standing to file the underlying charges*. Respondents also assert that Rosales lacked "standing" to file the unfair labor practice charges because Respondents' alleged unlawful maintenance and enforcement of the arbitration provision occurred well after her employment ended in January 2014. The Board has repeatedly rejected such arguments in prior cases as well, holding that former employees are protected by the Act and may file unfair labor practice charges over their former employer's post-termination maintenance and enforcement of an individual arbitration policy. See *Cowabunga*, slip op. at 2; *Fuji Food Products,* slip op. at 1 fn. 1, 7; *Employer's Resource,* slip op. at 1 fn. 2, 6; and *Cellular Sales of Missouri*, 362 NLRB 241, 246–247 (2015).

(3) *Rosales's concerted activity*. Finally, Respondents argue that the allegations should be dismissed because Rosales did not engage in any concerted activity within the meaning of the Act. However, again, the Board in prior cases has repeatedly rejected this argument, holding that the filing of an employment-related class or collective action by an individual constitutes concerted activity under the Act. See *Cowabunga,* slip op. at 2; *Fuji Food*

[3] As here, the mandatory arbitration provision in *Cowabunga* expressly excluded claims for unemployment and worker's compensation benefits.

[4] *D. R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir 2013); and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015).

[5] Appeal filed with the Ninth Circuit Feb. 22, 2015 (No. 16–55260).

Products, slip op. at 1 fn. 1; and *Employer's Resource*, slip op at 1 fn. 2, 7, and cases cited there.

CONCLUSIONS OF LAW

Respondents, as joint employers, have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act by:

1. Maintaining a mutual arbitration agreement that employees would reasonably believe bars or restricts them from filing unfair labor practice charges with the National Labor Relations Board.

2. Maintaining a mutual arbitration agreement that, as applied, compels employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

3. Seeking to enforce the foregoing mutual arbitration agreement against Rosales in her state court action since January 14, 2015.

REMEDY

Consistent with *D. R. Horton* and *Murphy Oil*, Respondents will be required to rescind or revise the mutual arbitration agreement containing the unlawful mandatory arbitration provision, and to notify Rosales and other current and former employees who signed or were subject to the agreement that they have done so.

Respondents will also be required to notify the state superior and appeals courts in *Rosales v. UPCS CA Resources, Inc. et al*., Superior Court Case No. 30-2014-00756943-CU-OE-CXC) and Court of Appeal, Fourth Appellate District, Division 3 Case No. G052269, that they have revised or rescinded the mutual arbitration agreement, and that Respondents no longer oppose Rosales's class or representative claims on the basis that they are barred by the agreement.

Respondents will also be required to reimburse Rosales for all reasonable expenses and legal fees, with interest, incurred in opposing their cross-complaint and subsequent motions and pleadings in the state court action seeking to enforce the mutual arbitration agreement to preclude class or representative claims. Interest shall be computed and compounded daily as set forth in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Finally, as requested by the General Counsel, Respondents will be required to post a notice to employees, in both English and Spanish, at all facilities where the mutual arbitration agreement has been maintained. Respondents will also be required to distribute the notice electronically, including by email, if they customarily communicate with employees by such means. See *J. Picini Flooring*, 356 NLRB 11, 14 (2010). And they will be required to mail the notice in the event they have gone out of business or have closed or ceased providing services at a particular facility. See, e.g., *SBM Management Services*, 362 NLRB 1207, 1207 at fn. 3 (2015).

Accordingly, based on the foregoing and the record as a whole, I issue the following order.[6]

ORDER

The National Labor Relations Board (NLRB) orders that Respondents, IIG Wireless, Inc., Garden Grove, California, and UPCS CA Resources, Inc., Irvine, California, joint employers, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a mutual arbitration agreement that employees would reasonably believe bars or restricts them from filing unfair labor practice charges with the NLRB.

(b) Maintaining and/or enforcing a mutual arbitration agreement in a manner that requires employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the mutual arbitration agreement in all of its forms, or revise it in all of its forms to make clear to employees that it does not bar or restrict them from filing charges with the NLRB or waive their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees who were required to sign or otherwise become bound to the mutual arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Notify the state superior and appeals courts in *Rosales v. UPCS CA Resources, Inc. et al*., Superior Court Case No. 30-2014-00756943-CU-OE-CXC), and Court of Appeal, Fourth Appellate District, Division 3 Case No. G052269, that they have rescinded or revised the mutual arbitration agreement upon which they based their January 14, 2015 cross-complaint and subsequent motions and pleadings seeking to preclude Rosales's class or representative claims, and inform the courts that they no longer oppose the claims on the basis of the agreement.

(d) Reimburse Rosales for any reasonable attorneys' fees and litigation expenses that she may have incurred in the above state court action in opposing the Respondents' cross-complaint and subsequent motions and pleadings seeking to preclude her class or representative claims on the basis of the agreement, with interest.

(e) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" in both English and Spanish at all of their facilities where the arbitration provision has been maintained.[7] Copies of the notice, on forms provided by the Region, after being signed by the Respondents' authorized representative(s), shall be posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to

[6] If no exceptions are filed as provided by Section 102.46 of the Board's Rules, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or have closed or ceased doing business at a facility covered by this order, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at those facilities at any time since November 14, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 14, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mutual arbitration agreement that employees would reasonably believe bars or restricts them from filing unfair labor practice charges with the National Labor Relations Board (NLRB).

WE WILL NOT maintain and/or enforce a mutual arbitration agreement in a manner that requires employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL rescind the mutual arbitration agreement in all of its forms, or revise it in all of its forms to make clear to employees that it does not bar or restrict them from filing charges with the NLRB or waive their right to maintain employment-related joint, class, or collective actions in all forums.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the mutual arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

WE WILL notify the state superior and appeals courts in *Rosales v. UPCS CA Resources, Inc. et al*., Superior Court Case No. 30-2014-00756943-CU-OE-CXC), and Court of Appeal, Fourth Appellate District, Division 3 Case No. G052269, that we have rescinded or revised the mutual arbitration agreement upon which we based our January 14, 2015 cross-complaint and subsequent motions and pleadings seeking to preclude Rosales's class or representative claims, and WE WILL inform the courts that we no longer oppose the claims on the basis of the agreement.

WE WILL reimburse Rosales for any reasonable attorneys' fees and litigation expenses that she may have incurred in the above state court action in opposing our cross-complaint and subsequent motions and pleadings seeking to preclude her class or representative claims on the basis of the agreement, with interest.

IIG WIRELESS, INC. AND UPCS CA RESOURCES, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-152170 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.